



## EUROPEAN COMMISSION

Brussels, 9.4.2014

C(2014) 2242 final

<p>In the published version of this decision, some information has been omitted, pursuant to articles 24 and 25 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, concerning non-disclosure of information covered by professional secrecy. The omissions are shown thus [...].</p>		<p style="text-align: center;"><b>PUBLIC VERSION</b></p> <p>This document is made available for information purposes only.</p>
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**Subject:** State aid SA.38346 (2014/NN) – Italy  
Capital injection – Aeroporto Valerio Catullo di Verona Villafranca S.p.A.

Madam,

### 1. PROCEDURE

- (1) After pre-notification contacts, by electronic notification dated 18 February 2014, Italy notified under article 108 (3) of the TFEU a measure concerning a capital increase of Aeroporto Valerio Catullo di Verona Villafranca S.p.A. The information was filed under the reference SA.38346.
- (2) The case was initially registered as a notified measure, but in view of the fact that the capital increase has already been implemented and the funds are within the control of the beneficiary, the measure was reclassified as unlawful aid and the case was transferred to the NN (not notified) register on 3 March 2014.
- (3) Italy has accepted exceptionally that the decision be adopted in English.

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## 2. DESCRIPTION OF THE MEASURES

### 2.1. Background

#### 2.1.1. *The airport management company*

- (4) Aeroporto Valerio Catullo di Verona Villafranca S.p.A. (hereinafter "AVC"), with its registered offices at Caselle di Sommacampagna in the Province of Verona, is a public limited company under private law mainly owned (around 90%) by a plurality of public shareholders, including the Chamber of Commerce of Verona, the Municipality of Verona and the Provinces of Verona, Trento and Bolzano. The remaining 10% is owned by private shareholders, such as Banco Popolare SC, Fondazione Cassa di Risparmio di Verona, Vicenza, Belluno e Ancona, Promofin S.r.l. and the Industrial Association of Mantua. AVC is responsible for the management of Verona Villafranca airport (hereinafter "Verona airport") and Brescia Montichiari airport (hereinafter "Brescia airport"). Verona and Brescia airports form an airport system (Sistema Aeroportuale del Garda), the latter airport intended to be specialized in cargo.
- (5) AVC also leads the company Gabriele D'Annunzio S.p.a., ground-handler in Brescia. A restructuring of the group as of January 2013 included the liquidation of some other companies, such as Avio Handling S.p.a., ground-handler in Verona, ADG Engineering S.r.l., Verona Cargo Centre S.p.a. and Cuore d'Italia S.c.a.r.l., and the fusion of Catullo Park through incorporation.
- (6) The infrastructure project which is partly financed by the notified measure is part of the AVC's new strategy set out in 2012, prepared by the new management as from 27 June 2011. The new management presented a ten-year business plan for the period 2012-2021, hereinafter "the business plan".

#### 2.1.2. *Verona airport*

- (7) Verona airport is managed by AVC on the basis of a 40-year comprehensive management concession contract, registered with the Italian Court of Auditors on 12 February 2009.<sup>1</sup>
- (8) In September 2008, after enjoying the status of 'military airport open to civilian air traffic'<sup>2</sup>, Verona airport formally passed from military to civilian status. It is located in "Villafranca di Verona", which is 12km from Verona city centre and about 30km from Sirmione, a popular tourist destination on Lake Garda.
- (9) It is a regional airport with 3.2 million passengers in 2012 and falls within the national network of main Italian airports.<sup>3</sup> The area has other regional airports in proximity, such as Brescia (approx. 66 km), also managed by AVC, Venice

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<sup>1</sup> Prior to this date, the company had operated at the airport first as concessionaire (until 16 December 2000) and subsequently on the basis of the provisional authorisation set forth in Article 17 of Decree Law No. 67/1997, as converted by Law No. 135/1997.

<sup>2</sup> In 1956 the first charter flight was opened from Verona under the jurisdiction and responsibility of the Italian Air Force. In 1961 a first scheduled flight operated Verona-Rome was operated by Air Italia.

<sup>3</sup> According to the National Plan of Airports (Piano Nazionale degli Aeroporti), p. 43 ff., delivered by ENAC and the Ministry of Infrastructure and Transport in February 2012, which lists 24 airport within the network.

(approx. 116 Km), Bergamo-Orio al Serio (approx. 117 km), Treviso (approx. 141 km) and Bolzano (approx. 151 km).

- (10) Traditionally the traffic at Verona airport has been shared mostly between legacy carriers and charter operators, representing jointly around 90% of total traffic in 2010 (respectively around 70% and 20%)<sup>4</sup>, and the rest being operated by low cost carriers.<sup>5</sup> The development of traffic and freight at the airport since 2007 is as follows:

**Table 1: passenger and freight development at Verona airport 2005-2013**

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Passengers (thousands)</b>	2,650	3,008	3,510	3,403	3,071	3,023	3,386	3,199	2,720
<b>Freight (tons)</b>	10,889	12,138	9,153	7,515	6,362	5,072	5,381	4,993	4,745

- (11) As presented in the business plan, the expected development of passenger traffic up to 2021, if the investment project partly financed by the notified measure is implemented, is as follows:

**Table 2: Expected passenger development at Verona airport 2014-2021**

Year	2014	2015	2016	2017	2018	2019	2020	2021
<b>Passengers (thousands)</b>	[...]*	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (12) With regard to freight, Verona Airport has a very small cargo facility and the Italian authorities indicate that this activity of the airport will remain stable (at [...] tons per year) in the upcoming period until 2021.

### 2.1.3. Brescia airport

- (13) Brescia airport, constructed by AVC in 1999, is managed by the company on the basis of a 40-year comprehensive management concession contract, granted through the Interministerial Decree of 18 March 2013.<sup>6</sup>
- (14) Brescia is specialized in cargo transport. Airports in proximity include Bergamo-Orio al Serio (approx. 68 Km), Linate (approx. 111 km) and Bologna (approx. 125 Km).
- (15) Brescia airport is currently focused on cargo and hosts airlines such as Mistral airlines, Lufthansa, Alitalia, Antonov and DHL.<sup>7</sup> In 2000-2012, its traffic level

<sup>4</sup> Carriers include Air One, Alitalia, Meridiana fly-Air Italy, Air Dolomiti, Lufthansa, British Airways, Eurolot, Aer Lingus, Air France-Klm, Air Moldova, Monarch, Neos, Volotea, S7 Airlines, Blue Panorama, Wizz.

<sup>5</sup> Low cost companies active in the airport include Easyjet, Wizzair, FlyBee, Volotea, Transavia and German Wings. As from October 2010 Ryanair started to operate in the airport, followed by Easy jet in 2011. However, Ryanair ceased its operations at the airport in October 2012.

\* Business secret

<sup>6</sup> Prior to this date, the company had operated the airport on the basis of the provisional authorisation set forth in Article 17 of Decree-Law No. 67/1997.

never reached 1 million of passengers. The number of passengers decreased over the years (from a peak of approx. 410,000 passengers in 2005 to only approximately 23,000 passengers in 2012), while the freight increased constantly (from 21,413 tons in 2005 to 40,746 tons in 2012). The development of traffic and freight at the airport since 2007 is as follows:

**Table 3: passenger and freight development at Brescia airport 2005-2013**

<b>Year</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
<b>Passengers (thousands)</b>	410	232	190	260	204	165	34	23	10
<b>Freight (tons)</b>	21,413	24,428	47,155	39,967	36,070	34,320	40,143	40,746	39,916

- (16) As presented in the business plan, the expected development of cargo volumes up to 2021, if the notified infrastructure measures are implemented, is as follows:

**Table 4: Expected freight development at Brescia airport 2014-2021**

<b>Year</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<b>Freight (tons)</b>	[...]	[...]	[...]	[...]	[...]	[...]	[...]	[...]

- (17) With regard to passenger numbers, Brescia airport's traffic is supposed to remain stable (at [...] passengers per year) in the upcoming period until 2021.

## **2.2. The investment project and its financing**

- (18) The notified measure is intended to strengthen the company's capital base so that it can contribute to financing the infrastructure investments envisaged in the 2012-2021 business plan. This business plan was conceived by the company in accordance with the commitments undertaken for the development of the airports of Verona and Brescia by AVC towards ENAC (the Italian National Agency for Civil Aviation).
- (19) Under the 2012-2021 business plan, Verona airport will focus on national / European passenger traffic and no longer distinguish between low cost, legacy and charter passengers, whereas general aviation at Brescia airport will be gradually set aside in the short term for the benefit of freight transport and in the long term for freight and passenger transport.
- (20) The capital increase subscribed by the public shareholders of the Company (the notified measure) is to cover part of the investments planned to extend and upgrade the existing infrastructure at the Verona and Brescia airports managed by the AVC. These investments are necessary for the airports to be able to meet the traffic demand in the region to sustain its competitiveness and development.

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<sup>7</sup> According to the website of the airport, in 2012 it was the fourth biggest Italian airport in term of cargo with more than 40.000 tons of freight. It is the hub of Poste Italiane, the state owned postal operator in Italy.

- (21) In particular, the airport development plans envisage around EUR 58 million of infrastructure works in the next ten years (2012-2021) in order to gear promptly, in compliance with the quality and security standards required by current legislation, to the forecasted growth in traffic and commercial development plans already launched.
- (22) More specifically, the company plans to make infrastructure investments of around EUR 43.5 million at Verona airport and around EUR 14.5 million at Brescia airport in the period 2012-2021. Such investments can be grouped schematically in the following macro-categories:

**Table 5: The investments at Verona and Brescia airports**

<b>Main investments</b>	<b>Verona</b>	<b>Brescia</b>	<b>Total</b>
	<b>Cost in thousand EUR</b>		
Terminal upgrade and extension	[...]	[...]	[...]
Improvement of road networks and parking facilities	[...]		[...]
Aircraft apron extension	[...]		[...]
Requalification of air-side and taxiway facilities	[...]	[...]	[...]
Re-protection Government Agency building	[...]		[...]
General aviation stands - Margherita North	[...]		[...]
Purchase of land for control tower	[...]		[...]
Warehouses and ramp/apron facilities	[...]		[...]
Upgrade of intersections and Rapid Exit Taxiway	[...]		[...]
Requalification and upgrade of networks and utilities	[...]		[...]
Safety works	[...]	[...]	[...]
Environmental reclamation works	[...]	[...]	[...]
Ramp facilities	[...]	[...]	[...]
EDP (Electronic Data Processing)	[...]	[...]	[...]
Security equipment	[...]	[...]	[...]
Ground handling equipment		[...]	[...]
<b>Total</b>	<b>43,574</b>	<b>14,521</b>	<b>58,095</b>

- (23) The investments will be implemented in three phases (short, medium and long term) in relation to their importance for the operability of airports.
- (24) The investment project will be partly financed through capital injection by the public shareholders (the notified measure). The remaining investments will be financed through:
- EUR [...] capital injection by the private shareholders (for Verona airport);
  - EUR [...] of private equity (EUR [...] to Verona airport and EUR [...] to Brescia airport) to be injected by a private investor; and
  - EUR [...] (Net Present Value, hereinafter "NPV") of the aviation and non-aviation revenues, i.e. self-financing (EUR [...] for Verona airport and EUR [...] for Brescia airport).

- (25) The measure that is the subject of this notification has its origin in an intervention by virtue of a Shareholder's resolution dated 10 August 2012 in the AVC's capital. This intervention entails a capital increase by means of the subscription of new shares by its shareholders for €[...].
- (26) The public shareholders of AVC, as at 31 January 2014, subscribed to the investment project with a total of EUR 12,729,816 (i.e. approximately EUR 12.7 million), as outlined in the table below.

**Table 6: Share subscriptions of AVC shareholders as at 31 December 2013**

Shareholders	Nature	No. of new shares	Value in EUR
Provincia di Verona	Public	[...]	1,299,980
Provincia di Brescia	Public	[...]	51,260
Provincia di Trento	Public	[...]	999,988
Comune di Verona	Public	[...]	1,046,276
Camera di Commercio di Verona	Public	[...]	6,297,808
Camera di Commercio di Trento	Public	[...]	62,084
Camera di Commercio di Mantova	Public	[...]	10,120
Tecnofin Trentina	Public	[...]	2,960,408
A.T.V. – Azienda Trasporti Verona	Public	[...]	1,892
<b>Total public shareholders:</b>		<b>[...]</b>	<b>12,729,816</b>
[...]	Private	[...]	[...]
[...]	Private	[...]	[...]
<b>Total:</b>		<b>[...]</b>	<b>[...]</b>

- (27) On 21 December 2012, the company has decided to freeze the resources received from shareholders for 60 days and the Italian authorities state in their notification that the capital increase subscribed by the public shareholders will not be used to finance the investments until the approval of the Commission of the notified measure.
- (28) The aid amount is limited to the funding gap of the investment project. When applying a discount rate of [...], the Italian authorities calculated a total funding gap of EUR 14.4 million (EUR 13 million for Verona airport and EUR 1.4 million for Brescia airport). The funding gap was determined on the basis of an ex ante business plan as the difference between the NPV of total eligible investment costs<sup>8</sup> and the NPV of the private equity<sup>9</sup> and of the net cash flows expected to be generated by the project under consideration<sup>10</sup> over the life time of the investment (i.e. 2012-2041). The discount rate of [...]% reflects the opportunity cost of

<sup>8</sup> The total eligible investment costs amount to EUR 58 million and will be spread out over a period of 10 years. Therefore, the NPV of the total investment costs is approximately EUR [...]. For Verona airport, these costs are EUR 43.5 million with an NPV of EUR [...]. For Brescia airport, the investment costs amount to EUR 14.5 million with an NPV of EUR [...].

<sup>9</sup> The private equity in 2012 amounts to EUR [...] (PV) for Verona airport. The private equity in 2014 amounts to EUR [...] (NPV EUR [...]), with EUR [...] for Verona airport (NPV EUR 14.2 million) and EUR 2 million for Brescia airport (NPV EUR [...]).

<sup>10</sup> The NPV of total net revenues is EUR [...], with EUR [...] for Verona airport and EUR [...] for Brescia airport.

capital (i.e. the cost of equity as the investment project will be financed only through equity).

- (29) The Italian authorities committed to limit the aid to EUR 12.7 million (approximately 90%, i.e. EUR 11.5 million for Verona airport and EUR 1.3 million for Brescia airport). The aid intensity amounts to an average of 22% (approximately 26% for Verona airport and 9% for Brescia airport). Without the aid, the NPV of the investment project would be negative.

### 3. ASSESSMENT

#### 3.1. State aid character of the measure

- (30) By virtue of Article 107(1) of the TFEU "*any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market.*"
- (31) The criteria laid down in Article 107(1) of the TFEU are cumulative. Therefore, in order to determine whether the notified measures constitute State aid within the meaning of Article 107(1) of the TFEU all of the following conditions need to be fulfilled. Namely, the financial support:
- is granted by the State or through State resources,
  - favours certain undertakings or the production of certain goods,
  - distorts or threatens to distort competition, and
  - affects trade between Member States.
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##### 3.1.1. Economic activity and notion of undertaking

- (32) According to settled case law, the Commission must first establish whether AVC is an undertaking within the meaning of Article 107(1) of the TFEU. The concept of an undertaking covers any entity engaged in an economic activity, regardless of its legal status and the way in which it is financed.<sup>11</sup> Any activity consisting in offering goods and services on a given market is an economic activity.<sup>12</sup>
- (33) In its "Leipzig-Halle airport" judgement, the Court of Justice confirmed that the operation of an airport for commercial purpose and the construction of the airport infrastructure constitute an economic activity.<sup>13</sup> Once an airport operator engages in economic activities, regardless of its legal status or the way in which it is

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<sup>11</sup> Case C-35/96 *Commission v Italy* [1998] ECR I-3851; C-41/90 *Höfner and Elser* [1991] ECR I-1979; Case C-244/94 *Fédération Française des Sociétés d'Assurances v Ministère de l'Agriculture et de la Pêche* [1995] ECR I-4013; Case C-55/96 *Job Centre* [1997] ECR I-7119.

<sup>12</sup> Case 118/85 *Commission v Italy* [1987] ECR 2599; Case 35/96 *Commission v Italy* [1998] ECR I-3851.

<sup>13</sup> Joint Cases T-455/08 *Flughafen Leipzig-Halle GmbH and Mitteldeutsche Flughafen AG c/ Commission* and T-443/08 *Freistaat Sachsen and Land Sachsen-Anhalt c/ Commission*, (hereafter: "Leipzig-Halle airport case"), [2011] ECR II-01311, confirmed by the ECJ, Case C-288/11 P *Mitteldeutsche Flughafen and Flughafen Leipzig-Halle v Commission*, [2012], not yet published in the ECR,; see also Case T-128/89 *Aéroports de Paris v Commission* [2000] ECR II-3929, confirmed by the ECJ, Case C-82/01P, ECR 2002 Page I-9297, and Case T-196/04 *Ryanair v Commission* [2008], ECR II-3643.

financed, it constitutes an undertaking within the meaning of Article 107(1) of the TFEU, and the Treaty rules on State aid therefore apply.<sup>14</sup>

- (34) In this regard the Commission notes that most part of the infrastructure which is the subject of the present decision will be operated on a commercial basis by the airport manager - AVC. Since the airport operator will charge users for the use of this infrastructure, the latter is commercially exploitable. It follows that the AVC, which exploits this infrastructure constitutes an undertaking for the purposes of Article 107(1) of the TFEU.
- (35) However, not all the activities of an airport operator are necessarily of an economic nature.<sup>15</sup>
- (36) The Court of Justice<sup>16</sup> has held that activities that normally fall under State responsibility in the exercise of its official powers as a public authority are not of an economic nature and do not fall within the scope of the rules on State aid. Such activities include security, air traffic control, police, customs, etc. The financing has to be strictly limited to compensation of the costs to which they give rise and may not be used instead to fund other economic activities.<sup>17</sup>
- (37) Therefore, the financing of activities falling within the public policy remit or of infrastructure directly related to these activities does not constitute State aid.<sup>18</sup>
- (38) The financing of infrastructure necessary for security reasons or essential for the control and supervision of the air navigation and airspace such as the investments into buildings for the Government Agency, upgrade of fire-fighting system, land for control tower and improvement of radio-assistance facilities connected to this, video surveillance system, barriers and other equipment and infrastructure necessary for procedures and checks could be considered to fall within the public policy remit and therefore to fall outside the scope of State aid control as argued by the Italian authorities.
- (39) However, given the form of the aid (i.e. capital injection) it will necessarily benefit all of the activities of AVC by reinforcing the equity basis of the company. In those conditions, the Commission cannot ring-fence a part of the notified measure as only limited to financing the non-economic activity of the airport operator.

### 3.1.2. *State resources and imputability to the State*

- (40) The concept of State aid applies to any advantage granted through State resources by the State itself or by any intermediary body acting by virtue of powers conferred on it.<sup>19</sup>

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<sup>14</sup> Cases C-159/91 and C-160/91, *Poucet v AGV and Pistre v Cancave* [1993] ECR I-637.

<sup>15</sup> Case C-364/92 *SAT Fluggesellschaft v Eurocontrol* [1994] ECR I-43.

<sup>16</sup> Commission Decision N309/2002 of 19 March 2003 on Aviation security - compensation for costs incurred following the attacks of 11 September 2001.

<sup>17</sup> Case C-343/95 *Cali & Figli v Servizi ecologici porto di Genova* [1997] ECR I-1547; Commission Decision N309/2002 of 19 March 2003; Commission Decision N438/2002 of 16 October 2002, Aid in support of the public authority functions in the Belgian port sector.

<sup>18</sup> See Commission Decision N309/2002 of 19 March 2003 on Aviation security - compensation for costs incurred following the attacks of 11 September 2001 and Commission Decision N620/2006 of 7 March 2007 on *Einrichtung des Regionalflyghafens Memmingen*.



- (41) In the present case, the participation of public authorities in the increase of AVC's capital is financed out of the budgets of public authorities. The notified measure is taken by the shareholders of AVC which are mostly by public authorities. Thus, the Commission considers that the notified measure is financed by State resources and imputable to the State.

### 3.1.3. *Advantage*

- (42) An investment by public authorities in the capital of undertakings constitutes State aid unless in similar circumstances a private investor, having regard in particular to the prospects of achieving a return, might have provided the same capital, i.e. "the Market Economy Investor Principle", or MEIP.<sup>20</sup>
- (43) It should be noted that for a capital injection to be considered as a decision in line with the MEIP, the Member State must provide evidence showing that the decision to realise the investment was taken, at the time, on the basis of economic evaluations comparable to those which, in similar circumstances, a rational private operator would have carried out in order to determine profitability of the investment.<sup>21</sup> However, the Italian authorities submitted a funding gap calculation showing that the project has a negative Net Present Value, which means that it would not have been undertaken by a private investor.
- (44) Consequently, the Commission finds that the notified capital increase, by reinforcing the equity base of AVC, provides AVC with an advantage that it would not have been able to get on market terms.

### 3.1.4. *Selectivity*

- (45) Article 107 (1) TFEU requires that a measure, in order to be defined as State aid, favours "*certain undertakings or the production of certain goods*". In the case at stake, the Commission notes that the capital increase concerns AVC only. Thus it is selective within the meaning of Article 107 (1) TFEU.

### 3.1.5. *Distortion of competition and effect on trade*

- (46) When aid granted by a Member State strengthens the position of an undertaking compared with other undertakings competing in the internal market, the latter must be regarded as affected by that aid. In accordance with settled case law<sup>22</sup>, for a measure to distort competition it is sufficient that the recipient of the aid competes with other undertakings on markets open to competition.
- (47) As previously explained, the operation of an airport is an economic activity.<sup>23</sup> Competition takes place on the one hand between airports to attract airlines and the correlative air traffic (passengers and freight) and on the other between airport operators, which may compete between themselves to be entrusted with the management of a given airport.

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<sup>19</sup> Case C-482/99 *France v Commission* (hereafter: "*Stardust Marine*") [2002] ECR I-4397.

<sup>20</sup> See, among others, the judgment in cases 234/84, *Belgium v Commission* [1986] ECR 2263, paragraph 14; C-305/89 [1991] ECR I-1603, paragraphs 18 and 19; joined cases C-278/92, C-279/92 and C-280/92 *Hytasa* [1994] ECR I-4103, paragraphs 20 and 21; C-303/88 *Eni-Lanerossi* [1991] ECR I-1433, paragraphs 20 et seq.; case T-11/95 *BP Chemicals* [1995] ECR II-599, paragraph 161.

<sup>21</sup> Case C-124/10 P *Commission v EDF*, paras.82-84.

<sup>22</sup> Case T-214/95 *Het Vlaamse Gewest v Commission* [1998] ECR II-717.

<sup>23</sup> See above, paragraph 20 further above.

- (48) In this context, the Commission notes that airports of all sizes<sup>24</sup>, including relatively small airports<sup>25</sup>, compete to attract airlines. As mentioned in the Aviation Guidelines<sup>26</sup>, it is not possible to exclude small airports from the scope of application of Article 107(1) of the TFEU.
- (49) Considering the forecasted traffic at Verona airport and Brescia airport and the proximity of the latter airport to e.g. Bergamo-Orio Al Serio (68 kilometres away), the Commission considers that competition and trade between Member States are likely to be affected.
- (50) In view of the above, the measure at stake is capable of affecting competition between airport operators by strengthening the attractiveness of Verona airport and Brescia airport for airlines. Moreover, the economic advantage which AVC receives strengthens its position vis-à-vis its competitors on the European market of providers of airport services. Therefore, the public funding under examination distorts or threatens to distort competition and affects trade between the Member States.

### Conclusion

- (51) In view of the above the Commission takes the view that the financing granted to AVC constitutes State aid within the meaning of Article 107(1) of the TFEU.

### **3.2. Legality of the aid measure**

- (52) In view of the fact that the resolution by which the shareholders have subscribed the shares of AVC was adopted on 10 August 2012 and the amount has already been paid out by the shareholders, meaning that the financing was already put at the disposal of AVC prior to the Commission decision, the Commission has to consider that Italy has not respected the prohibition of Article 108(3) of the TFEU, thereby rendering the aid unlawful.<sup>27</sup> Nevertheless, the Commission takes note of the fact that the resources have been frozen for 60 days and that the capital increase subscribed by the public shareholders will not be used to finance the investments until the approval by the Commission of the notified measure.

### **3.3. Compatibility of the aid**

- (53) The Commission has assessed the compatibility of the measure in question upon the basis of Article 107 (3) (c) TFEU. Article 107 (3) (c) TFEU stipulates that: "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest*", may be considered to be compatible with the internal market. In this regard, the Aviation Guidelines provide a framework for assessing whether aid to airports may be declared compatible pursuant to

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<sup>24</sup> Verona airport will serve a total of 31.3 million passengers between 2013 and 2021, with more than 3 million passengers every year.

<sup>25</sup> Brescia airport served 410,000 passengers in 2005.

<sup>26</sup> Paragraph 40 of the Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports (the "2005 Aviation Guidelines"), OJ C 312, 9.12.2005, p. 1 and paragraph 44 of the Guidelines on State aid to airports and airlines (the "2014 Aviation Guidelines"), adopted on 20 February 2014, not yet published in the OJ, available on: [http://ec.europa.eu/competition/state\\_aid/modernisation/aviation\\_guidelines\\_en.pdf](http://ec.europa.eu/competition/state_aid/modernisation/aviation_guidelines_en.pdf)

<sup>27</sup> Case T 109/01 Fleuren Compost v Commission [2004] ECR II-127.

Article 107 (3) (c) TFEU. As the measure under assessment has to be considered as unlawful aid, in accordance with paragraph 173 of the 2014 Aviation Guidelines<sup>28</sup>, the Commission will apply the rules in force at the time when the aid was granted. Therefore, the Community Guidelines on financing of airports and start-up aid to airlines departing from regional airports<sup>29</sup> (hereinafter the "2005 Aviation Guidelines") will be applicable.

#### Compliance with the 2005 Aviation Guidelines

(54) According to point 61 of the 2005 Aviation Guidelines the Commission has to examine whether:

- the construction and operation of the infrastructure meets a clearly defined objective of general interest (regional development, accessibility, etc.);
- the infrastructure is necessary and proportional to the objective which has been set;
- the infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure;
- all potential users of the infrastructure have access to it in an equal and non-discriminatory manner;
- the development of trade is not affected to an extent contrary to the EU interest.

(55) In addition to the requirement to satisfy specific compatibility criteria specified in the 2005 Aviation Guidelines, State aid to airports, as any other State aid measure, should have an incentive effect and should be necessary and proportional in relation to the achievement of an objective of common interest in order to be cleared as compatible aid<sup>30</sup>.

(i) Construction and operation of the infrastructure meets a clearly defined objective of common interest (regional development, accessibility, etc.)

(56) With regard to the achievement of a policy objective of common interest, according to Italy, the main objective of the investment project at stake is to maintain and improve the accessibility of the region, and thus to stimulate the regional development and the creation of new jobs.

(57) The investment project is linked to the development of cargo and passenger transport in one of Italy's most important regional areas (the north-eastern region) in economic and industrial terms. Verona and Brescia airports form the 'Garda airport system' and serve a catchment area which is one of the largest districts in Europe, at the centre of an area straddling Lombardy, Veneto and Emilia-Romagna, i.e. one of the most populous and economically developed areas in Italy.

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<sup>28</sup> Cited above in footnote 26.

<sup>29</sup> Cited above in footnote 26.

<sup>30</sup> It is constant case law that the Commission can declare an aid compatible only if it is necessary for achieving an objective of common interest (see for example case 730/79, Philipp Morris; case C-390/06, Nuova Agricast; case T-162/06, Kronoply).

- (58) According to Italy, the upgrading of the infrastructure at Brescia and Verona airports has been made necessary through the growth trend in international airport traffic. The 2012-2021 business plan of Verona and Brescia airports considers the fact that the traffic development envisaged, despite kept to conservatively low levels, is showing a clear upward trend. This result is in line with the general recovery trend of European air transport (in 2012 the total passenger traffic at European airports increased by 1.8% and in Italy the growth of international traffic was +1.7%, with an increase of 1.5 million passengers).
- (59) The planned investments are not only in the interest of the commercial development of the airport but also for the benefit of regional tourism and business. The implementation of the project will have a positive impact on the area in question, in terms of both industry and commerce, by increasing its attractiveness to new investment and tourism.
- (60) The new investments will not constitute a duplication of existing non-profitable infrastructure. Considering the different capabilities of the existing airports and the renovated airport, the latter will rather complement the existing infrastructures and increase the capacity and thus benefit the general public. The strategic location of both airports along important motorways (A4 Milan-Venice, A22 Verona-Brenner, and the Brescia-Bergamo-Milan motorway, known as the “Bre.Be.Mi”) and railway lines (a high speed line is being designed) makes them easily and quickly accessible and increases the potential of an already booming market, from both a touristic and commercial perspective. The neighbouring airports alone would not be able to handle the expected increase in traffic, because they are already at full capacity and no extension works are planned.
- (61) According to Italy, the development of Brescia airport which will benefit not only the region but Italy as a whole. It is aimed at remedying the inefficiencies associated with air cargo in Italy and taking advantage of the economic and employment benefits that the cargo sector can generate. In this respect, the Italian authorities point to the fact that, at the moment “made in Italy” products are often transhipped by foreign airports given the inadequacy of the freight infrastructure of the Italian airports.
- (62) The Italian authorities also indicate that the improvement of Verona and Brescia airports, being the driving force behind the economy of the region, would inevitably stimulate the creation of new jobs and therefore will inevitably have positive effects on the Italian economy as well.
- (63) In light of the above, the Commission can conclude that the modernization and operation of the infrastructure project meets a clearly defined objective of common interest.
- (ii) *The infrastructure is necessary and proportional to the objective which has been set*
- (64) According to Italy, the investments will be undertaken only as far as is necessary to efficiently respond to current demand and expected growth, with the ultimate result of preventing flight delays.
- (65) The 2012-2021 business plan was developed based on conservative forecasts, and is intended to allow Verona and Brescia airports to sustain steady growth in

passenger and freight traffic respectively, in line with their potential and the demand from the catchment area.

- (66) With regard to Verona airport, the works required for the improvement and maintenance of the airport infrastructure (€13.5 million in 10 years) were agreed by the Company with ENAC (the Italian National Civil Aviation) based on the expected increase in traffic (from 3.3 million passengers in 2011 to nearly [...] passengers in 2017). This forecasted increase requires optimising the use of existing infrastructure by improving the road networks, upgrading and extending the terminal, runway and intersections and extending the apron.
- (67) Furthermore, the planned modernisation of Verona airport is necessary because the present facilities do not meet the requirements for unhindered flow of passengers and suffer from congestion at peak times, especially during summer weekends. The current passenger flows at Verona airport during peak times are hindered by occupation of the runway by departing aircrafts before take-off and the absence of rapid exit taxiways which allow for a swift evacuation of the runway. Furthermore, due to several bottlenecks in some of the airport subsystems, mainly in the safety channels, apron and gate areas, the runway peak hour movements are currently limited to 14 movements an hour. Moreover, the existing apron is too small (insufficient number of stands at night) and is detrimental to the efficiency of the airport.
- (68) The planned investments aim to resolve these deficiencies. More in particular, the investments are focused on upgrading and increasing the number of channels, reconfiguring the aprons and rationalising the terminal operational space, which is currently imbalanced towards landside rather than airside where circulation space is needed. The increase of the runway length will not only mean a bigger capacity of movements per hour (from 14 to [...], with the possibility of even bringing the runway capacity to [...] movements/hour in the short term) but will also result in the possibility of take-off for larger aircrafts without weight limitation. Thanks to these investments the efficiency of the airport will progressively increase making it able to respond to the current and future traffic demand.
- (69) Investments at Brescia airport (€14.5 million in 10 years) are preparatory to developing the airport in accordance with its special vocation, which is of strategic importance to the area for freight traffic in the short term, and for passenger and freight traffic in the medium and long term. The expected improvements are meant to attract operators from the region by exploiting the airport to its full potential. Currently, the airport manages about 40,000 tonnes freight. However, thanks to its location in the centre of Northern Italy, it has the potential to manage up to twice that amount if provided with the necessary infrastructure.
- (70) In addition, the cost/benefit analysis submitted by the Italian authorities provides that the infrastructure project of both airports will be undertaken only to the extent it is necessary to attain the goals set and that the project is not disproportionately large or elaborate.
- (71) To conclude, the infrastructure investment that will be made thanks to the investments is targeted towards unlocking latent capacity and adapting to the market's development, carrying out the plans to renew the airport infrastructure by upgrading it in compliance with safety standards, which are fully justified by the forecasts of growth at Verona and Brescia airports. The investments are

limited to what is strictly necessary to allow the airport to respond in the long run to the increased traffic demand and to avoid flight delays.

(72) The Commission can therefore conclude that the infrastructure in question is necessary and proportional to the objectives which have been set.

(iii) The infrastructure has satisfactory medium-term prospects for use, in particular as regards the use of existing infrastructure

(73) Given their location, Brescia and Verona airports serve a catchment area that covers a population of 20 million residents, as well as the millions of travellers (tourists and business people) who visit the north-east of Italy every year.

(74) Although 2012 saw a sustained economic recession, this does not alter the forecasts for growth at the airports, since these airports remain an important hub for traffic expansion, with an extremely high growth potential.

(75) According to Italy, the infrastructure will be developed to optimise and maximise their use, foreseeing additions and extensions only when strictly necessary and consistent with economic and financial sustainability, and based on available resources and expected returns.

(76) The Italian authorities further indicate that ,based on the projections of airport traffic volumes, the planned investments will allow for a capacity and operational increase that has positive impact on revenues and on the overall efficiency of the airports.

(77) On the basis of the above mentioned forecasts for passenger numbers, in the medium term, the development project for Verona airport and Brescia airport offers good perspectives for use, especially in relation to existing infrastructure at the airport, which the planned works will optimise.

(iv) All potential users of the infrastructure have access to it in an equal and non-discriminatory manner

(78) Italy has confirmed that all potential users – in particular airlines – will have access to the airport infrastructure on an equal and non-discriminatory basis without any commercially unjustified discrimination.

(v) The development of trade is not affected to an extent contrary to the interest of the EU

(79) With regard to Verona airport, the investments planned are intended to make it possible for the airport to manage its existing capacity in the best possible way, increasing it to [...] passengers in the short term (2015) and [...] over the longer term (2025).

(80) In terms of passenger traffic, Verona airport's potential catchment area covers approximately 20 million people between Lombardy, Veneto, Piedmont and eastern Emilia. However, to date the majority of outbound traffic from Verona has been generated by passengers arriving from the cities of the region (49.9% Verona, 9.9% Brescia, 9.8%, Trento, 9.4% Vicenza, 4.3% Mantua, Bolzano 3.8%, and 3.1% Padua). For this reason, it can be argued that there is only a minimal

amount of overlap with the catchment area of neighbouring airports and that the planned investments will not have any significant impact on the activity of those airports. Moreover, even in the case of a limited overlapping of catchment areas, the increase in capacity at Verona and Brescia airports will ultimately help in decongesting the neighbouring airports, (most of which according to the information provided by Italy have reached their capacity limit) as well as coping with expected increase in traffic.

- (81) With regard to Brescia airport, the traffic increase will mainly affect cargo traffic and not passenger traffic, which will remain lower than 1 million. In relation to small regional airports with less than 1 million passengers per year, the Aviation Guidelines recognise that funding granted to such airports is 'unlikely to distort competition or affect trade to an extent contrary to the common interest'.
- (82) In addition, the development of Brescia airport's freight traffic will not affect the neighbouring airports of Linate, Orio al Serio and Bologna, because they have serious environmental concerns that inevitably restrict their overall capacity.<sup>31</sup> Moreover, the expansion is designed to attract those operators who currently do not ship their goods directly by air but by truck. Furthermore, about 50% of Italian goods produced in northern Italy and transported by air is currently shipped from the main European airports (Frankfurt, Munich, Amsterdam), having to bear the costs of transshipping goods to airports far from the place of manufacturing. Therefore, the investments made with public funding in the airport infrastructure in question will not lead to significant distortions of competition.
- (83) On the basis of the above, the Commission concludes that the development of trade is not affected to an extent contrary to the interest of the EU.

*(vi) Necessity of aid and incentive effect*

- (84) The Commission must establish, whether the State aid granted to AVC has changed the behaviour of the beneficiary undertaking in such a way that it engages in an activity that contributes to the achievement of a an objective of common interest that (i) it would not carry out without the aid, or (ii) it would carry out in a restricted or different manner. In addition, the aid is considered to be proportionate, only if the same result could not be reached with less aid and less distortion. This means that the amount and intensity of the aid must be limited to the minimum needed for the aided activity to take place.
- (85) According to the financial analysis provided by Italy, without the aid the investment could not be realised to the same extent. The growth potential of the airport can be fulfilled only through the initial capital investment subscribed by the Company's shareholders, which will open the way for further investments, sized and programmed in stages, based on a detailed analysis of the traffic scenarios and parameters that influence them. Moreover, without the aid, the NPV of the investment project would be negative.

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<sup>31</sup> Linate does not operate at night and has a very limited potential for freight operations. Orio al Serio, operates cargo flight on a regular basis and its freight traffic has grown constantly over the last years, but no extension of this airport infrastructure is planned considering that the airport is surrounded by densely populated areas. Bologna airport has reached its environmental capacity and has a limited runway length that does not encourage long haul freight operations.

- (86) The Commission considers that in those conditions, it can be concluded that the aid measure at stake has an incentive effect, as it will enable the beneficiary to realize the notified investments.
- (87) With regard to the assessment of the proportionality of the aid, Italy has provided a calculation of the funding gap of the investment project showing that the aid will not exceed the total funding gap (EUR 14.4 million).
- (88) As described in paragraph 22, the funding gap was determined on the basis of an ex ante business plan as the difference between the NPV of total eligible investment costs and the NPV of the private equity and of the net cash flows expected to be generated by the project under consideration over the life time of the investment (i.e. 2012-2041). The discount rate of [...] % reflects the opportunity cost of capital of AVC (i.e. the cost of equity as the investment project will be financed only through equity).
- (89) The overall funding gap amounts to EUR 14.4 million, with a funding gap of around EUR 13 million for Verona airport and EUR 1.4 million for Brescia airport.
- (90) The public funding granted (i.e. EUR 12.7 million, with EUR 11.5 million for Verona airport and EUR 1.3 million for Brescia airport) is limited to the strictly necessary in order to realise the project. It is below the funding gap (i.e. what cannot be self-financed and no other market actors are willing to contribute) and thus without the notified measure there would not be enough funds to finance the investments (as the NPV of the investment project would be negative).
- (91) The aid intensity amounts to around 22% (26% for Verona and 9% for Brescia). As the 2005 Aviation Guidelines leave open the issue of aid intensities, the maximum permissible aid amount has to be limited to the funding gap calculated on the basis of an ex ante business plan of the airport. Moreover, the Commission notes that the investments concerned are similar to the investments at airports with comparable characteristics.<sup>32</sup> Therefore, the aid intensity of 22% is proportionate in the case at stake.

### Conclusion

- (92) In view of the above, the Commission concludes that the measure is compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (93) This conclusion under State aid rules is without prejudice to the application of other provisions of EU law, including EU environmental legislation.

## **4. CONCLUSION**

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<sup>32</sup> See Commission decision of 11 February 2009 in State aid case N 472/2008 – Poland – Investment aid for airports under the infrastructure and environment operational programme, OJ C 79, 2 April 2009 and Commission decision of 13 July 2009 in State aid case N 196/2008 – Poland – Investment aid for the airports under Regional Operational Programmes, OJ C 204, 29 August 2009, and Commission decision of 19 December 2012 in State aid case No SA.35220 (2012/N) – Greece – Makedonia Airport Modernisation, OJ C 36, 8 February 2013.



- (94) The Commission regrets that Italy put the measure in question into effect, in breach of Article 108 (3) of the TFEU.
- (95) However, on the basis of the foregoing assessment, the Commission has decided that the measure constitutes aid compatible with the internal market pursuant to Article 107(3)(c) TFEU.
- (96) The Commission notes that Italy accepts the adoption of the Decision in the English language.

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Yours faithfully,  
For the Commission

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Vice-President